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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

TRENT D. ORBAKER,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.

DECISION and ORDER
09-CV-00008S

Petitioner, Trent D. Orbacker, who was convicted upon a plea of guilty to a violation of 18 U.S.C. § 3141 and sentenced to a term of imprisonment of 18 months and a three year term of supervised release, United States v. Orbaker, 08-CR-0172S, and is currently scheduled to report to the United States Bureau of Prisons on January 13, 2009, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Docket No. 1, 09-CV-0008S). Plaintiff alleges, as best the Court can discern from the *pro se* petition, that this Court lacked jurisdiction over him in the criminal prosecution. In support of his allegation, Plaintiff contends that Public Law, 80-772, when originally enacted, and now codified as 18 U.S.C. § 3231,¹ was not published in the Federal Register and therefore was not properly enacted. Petitioner further alleges that a criminal complaint supported by probable cause was not filed in this criminal prosecution as required by Fed.R.Crim.P. 3. Petitioner also seeks a stay of execution of his sentence.

¹18 U.S.C. § 3231 provides:

The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

IT IS HEREBY ORDERED that:

1. Petitioner's request for a stay of execution of his sentence is denied.²

2. Within **21 days** of the service of this order, respondent shall file and serve an **answer** to the application with the Clerk of Court which shall respond to the allegations of the petition. Alternatively, in the appropriate case, respondent may file a motion to dismiss the petition, accompanied by pertinent exhibits which demonstrate that an answer to the petition is unnecessary, by no later than **21 days** from service of this order.

Respondent also shall file and serve by the above date a **memorandum of law** with the Clerk of Court addressing each of the issues raised in the petition and including citations of relevant supporting authority. Respondent is directed to address specifically whether or not the instant petition was properly filed as one under 28 U.S.C. § 2241, as opposed to 28 U.S.C. § 2255.

Petitioner shall have **10 days** upon receipt of the answer to file a written response to the answer and memorandum of law (or motion to dismiss).

3. The Clerk of Court shall serve a copy of the petition, together with a copy of this order, by certified mail, upon the Acting United States Attorney for the Western District of New York, Federal Center, 138 Delaware Avenue, Buffalo, New York 14202.

SO ORDERED.

Dated: January 9, 2009
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge

²See Fed.R.App.P. 9(b) and (c); 18 U.S.C. § 3143(b). The Court notes that petitioner has not filed a notice of appeal from the Amended Judgment of Conviction, entered on December 22, 2008.